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Rules Committee
January 09, 2008

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The Rules Committee met at 1:30 p.m. on Wednesday, January 9, 2008, in Room 1524 of the State Capitol, Lincoln, Nebraska. Senators present: Carol Hudkins, Chairperson; Philip Erdman, Vice Chairperson; Annette Dubas; Steve Lathrop; and Tom White. Senators absent: None. Also present: Senator Lavon Heidemann. []

SENATOR HUDKINS: Ladies and gentlemen, thank you for attending. This is the Rules Committee hearing. We do not have a full complement of committee members, but we're going to go ahead and get started because your time is important too. Joining us this afternoon as committee members are: Senator Flood, the ex officio member, but a very important member nonetheless; Senator Dubas will be joining us, hopefully, soon; Senator Erdman from Bayard; the committee clerk, Shirley Bruhl; I'm Carol Hudkins from Malcolm; the legal counsel is in the audience right now, Jim Ruby; Senator Steve Lathrop from Omaha, excuse me. We haven't been back long enough yet. []

SENATOR LATHROP: We're very close. (Laughter) []

SENATOR HUDKINS: And Senator Tom White from Omaha. It's time to go back to work when I start forgetting the names. First of all you know, turn off your cell phones. And because my voice is coming and going today, legal counsel for the committee, Jim Ruby, is going to introduce the proposed rules changes from the committee. So, Mr. Ruby. []

JIM RUBY: Thank you, Chair Hudkins, members of the committee. If it's all right, what I'll do is I'll go through the...each of you, on your desk, has a handout that is the motion by Senator Hudkins for the amendments to the rules, as well as the amendment offered by Senator Erdman. I'll leave Senator Erdman's amendment up to him to introduce. And I'll just go through these one at a time and then allow the rest of the members or the audience to have their discussion with regards to each one. The first amendment that was offered is: Amend Rule 3, Section 4(b). What that amendment does, it's really a cost savings as well as a recognition of the way that the body actually...and the rules are actually used and implemented within the system. If you allow the Speaker to be the Chair of the Rules Committee, what you end up doing is reducing the number of legal counsels within the body by one, which will end up resulting in a savings of about \$35,000 per year. In reality, as the way the rules are used and interpreted and applied, the Speaker's Office and the Clerk's Office are the two offices that work the closest with the rules on a day to day basis. They are the ones that are, on an ongoing basis, asked to interpret the rules, asked to apply the rules, and they are the ones that are expected to know them the best with regards to when a question is made from the audience or from the floor. And so it was offered, after discussions with the senator about whether or not there are any rules that could be amended in a way that there could be savings applied to the Legislature. And this is one of them. If you make the Speaker the Chair of

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the Rules Committee, you reduce the number of legal counsels in the body by one, which ultimately results in approximately a \$35,000 a year savings. []

SENATOR HUDKINS: Are there any questions? Senator Flood, any comments? []

SENATOR FLOOD: I just want to put on the record that I have no interest, personally. This wasn't something I called up the Rules Committee and wanted. I don't know that it's necessary. But if the committee feels this is the way to go, you know obviously we'll do it. But I don't have any concerns with the way it's been running. And I think that there is some value to having a separate Rules Chairman from the Speaker in as much as my job as Speaker is obviously to make sure we're ruling on what the rules mean and then making them at the same time. And being the Chairman of the Rules Committee may concern some in the body. That's certainly not my intent. So I can...I'll do whatever the committee and the ultimate body of the Legislature wants. But I don't know that it's necessary. []

SENATOR HUDKINS: Any other? Senator Erdman. []

SENATOR ERDMAN: Madam Chairman, we're taking up number one, and number three will be taken up separately, even though they are somewhat concurrent? []

SENATOR HUDKINS: Yes, separately. []

SENATOR ERDMAN: Okay. []

SENATOR HUDKINS: Are there other questions? All right, thank you. Jim, if you want to introduce number two. []

JIM RUBY: Number two, members, is...practice before the body has been that a committee amendment that is offered on General File that guts the entire subject matter of a bill and introduces totally new matter to that bill, even though under the current germaneness rule it would be ruled not germane, the practice has been to allow them to be germane anyway. Last session there was a motion by Senator Hudkins on a bill that was a committee amendment, and the Chair again ruled, for the second time in several years, that it was going to be a germane amendment. That rule...that practice started in about '94 with an actual ruling from the Chair by Senator Withem, who was the Speaker at that time. Because that's been the practice it was thought that it would be appropriate, especially with the term limits that are being applied and the turnover in the body, that having that practice in the rule would make it clear for everybody that that is the rule. And so it's just an attempt to take the take the unwritten rule and put it in the book. []

SENATOR LATHROP: Would this...may I ask a question? []

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SENATOR HUDKINS: Yes, please. []

SENATOR LATHROP: Would this change permit a committee amendment to...you would gut the underlying bill, we'd have a committee amendment. And does that...does this necessarily have to have had a hearing? []

JIM RUBY: No. []

SENATOR LATHROP: So what this... []

JIM RUBY: The germaneness rule wouldn't apply to that. []

SENATOR LATHROP: What this would allow then is an amendment to an existing bill and we insert into the bill matter that was never heard in a committee even though it may be a new subject matter? []

JIM RUBY: Could very well happen. The germaneness rule wouldn't apply to that anyway, under the current practice. []

SENATOR LATHROP: Okay. []

SENATOR HUDKINS: Other questions? Senator Erdman. []

SENATOR ERDMAN: Jim, refresh my memory on what the bill was last year that the situation happened in? []

JIM RUBY: I don't remember, Senator. I don't remember the bill that it applied to. []

SENATOR HUDKINS: Senator Flood. []

SENATOR FLOOD: Thank you, Chairperson Hudkins. I guess, one of my concerns, and I did make the ruling last year to be consistent with Speaker Withem from 1994. And I relied on the prior Speaker's decision at that time to remain consistent. One of the concerns I have, though, in watching committees work is we have some of these, I'll call them Christmas tree bills, where we have, you know, up to 10 or 11 bills in a committee amendment, which I know I ruled that way to stay consistent with our policy. But I want to clarify that there are other rules that govern what can be in a bill. We have the one subject rule, we also have a separate rule that requires that there be a public hearing on every bill that's introduced. And one of the things I tried very carefully to do last year if we had new matter that was introduced in an amendment and it was of substance enough to require, I thought, citizen input, we did send a couple of bills back for public hearings. So I guess the Clerk and I have talked about some specific language that he

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suggested. And I think there is some merit to having this discussion because it was a difficult decision last year. But I think we have to be very careful with the language that we use. And has the Clerk provided you a suggested... []

JIM RUBY: This language here is the language that the Clerk and I worked out. []

SENATOR FLOOD: Okay. []

JIM RUBY: Now there is...I will point out to the committee that you have attached to here a letter from Bill Marienau, who would prefer...who is legal counsel for the Commerce...Banking and Insurance Committee, who would like to...who believes he would...that it might be clearer if we used some different language. There has been another legal counsel who has spoken with me who had some concern that this applied to all committee amendments. And I pointed out to him it doesn't. It only...this is much like the hearsay rule. You have the rule and then there are exceptions to the rule. Here we have the germaneness rule that these committee amendments as...are generally not germane. If you looked at them and applied the rule as it's written without taking that extra step that the 1994 decision from the Chair created, it isn't germane, they're not. They are totally different, they are not the same as the bill. And so you have to make an exception in order for that...in order to get it past that logic break. And so this is what does that. It allows for a specific type of a committee amendment that would not otherwise be germane to be considered by the body, even though a germaneness ruling, if asked for, would say no, we're not going to consider it. []

SENATOR HUDKINS: Senator Erdman. []

SENATOR ERDMAN: Let me give you an example, Jim, see there are other rules that apply to this. We reference bills that are introduced to the Legislature by the Reference Committee, which is the Executive Board. And at times bills get referenced from committee A to committee B that may have been in committee A prior or vice versa. So a bill gets referenced to another committee. And generally that topic would come into the committee that's going to offer an idea like you're proposing, gutting a bill and amending it. Say that other committee killed that bill. They offered this as a germane amendment, which was within their subject matter, on the floor of the Legislature to a different bill. That...I would argue that that amendment would require 30 votes because that bill had been killed. But can you envision...I mean, I'm just trying to think of what you're actually trying to accomplish in the situation where the committee may say this bill was introduced, we have a different bill that we need to use and we've done in the past, we're going to gut this as a vehicle to use that as our carrier. But can you see the mischief, maybe, that a committee may then circumvent another committee in that case, or maybe a bill doesn't advance on General File, they go back in the committee, pick another bill, they gut it with the same bill, send it back out. We can't reconsider a bill on General File until it fails to advance three times. So instead they say, well, we won't get

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another shot at it, let's go ahead and put it into this amendment, do it this way, it's germane even though the underlying bill has no value. Are we creating a precedent in which we're short-circuiting the process the way this is written versus what I think we're trying to say, and that is generally committee amendments are germane? []

JIM RUBY: The practice already exists, absent someone sitting in the chair who is willing to override precedent and say, no, we're not going to rule this germane. Then the precedent is already there. The question is, are you going to write it in the book so that everybody is aware of what the practice has been? That is the issue. And this only goes to germaneness. It doesn't go to whether or not a bill needs a hearing or whether it is bringing in new subject matter or if it violates...because...and it probably won't violate the one subject matter under the same reasoning, because you've gutted the bill. Thus the argument is since there is nothing in the bill, because you've gutted it, but it's not gutted until the amendment is adopted, but because you're gutting the bill there is nothing in there except a number. []

SENATOR ERDMAN: But if this gets adopted, what you have done is you have taken away some of the freedom, if you will, that the presiding officer would have, the Speaker, in determining those cases. The examples that I gave, under this rule they would be germane. There would be nothing you could do but vote them down. []

JIM RUBY: Right. []

SENATOR ERDMAN: There would be no ruling from the Chair that would say that those were inappropriate and somehow violate the integrity of our process or would set a different precedent. So I'm just trying to understand what the trade-off is, you know. Out loud, I guess, I would be more comfortable allowing some flexibility. But if we need to clarify how committee amendments are treated, as far as the germaneness rule, I think that's fine. I'm not sure that I'm comfortable with this because of where I'm at and some of the examples I've given you. But I think I have an idea of what you're trying to do. []

JIM RUBY: The object is just simply to put in the Rule Book what has been the practice. []

SENATOR ERDMAN: Yeah. []

SENATOR LATHROP: Can you tell me what the evil is that you're trying to cure here? Give me an example of something that we've...did something happen last year or something that you're imagining might necessitate this rule? []

JIM RUBY: There is no evil that this rule has set...is meant to correct. This rule only brings into the Rule Book what has been the practice since 1994 as far as if you made a motion to overrule...to find an amendment not germane. And it's a committee

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amendment that guts the bill. The practice has been, so long as it guts the bill, it doesn't matter what the subject matter of the two are, it will be held germane. That's the practice and that has been the ruling from the Chair since '94. That being the case, this amendment would only put in the Rule Book that practice. []

SENATOR LATHROP: Okay. []

SENATOR HUDKINS: Does that answer your question? []

SENATOR LATHROP: It does. []

SENATOR HUDKINS: All right. []

SENATOR LATHROP: Thank you. []

SENATOR HUDKINS: Other questions? All right, thank you. Mr. Marienau, would you like to come forward and talk about your amendment? And this is found on the last page of your handout. []

BILL MARIENAU: Senator Hudkins and members of the committee, for the record I'll state my name is Bill Marienau, M-a-r-i-e-n-a-u. I'm a legal counsel to the Banking, Commerce and Insurance Committee. Personally, I'd like to point out that today I've started my 30th session of the Legislature and I've never come to bother the Rules Committee before on anything. So I didn't want anybody to think I'm some sort of chronic rules crank or something. (Laughter) This came up when, you know, Chairman Hudkins was kind enough to distribute the proposed rules. And I looked at the one that would propose an amendment to Rule 7, Section 3. And I went and talked with Mr. Ruby and he told me what the proposal was intended to accomplish. And I said, well, I was a little concerned that it could be taken wrong and that if one applied a too literal reading of the proposal that it might require that all committee amendments include all of the provisions of the underlying bill. Now I know that's kind of a far-fetched conclusion, but it could be within the reading of that rule. And so Jim more or less said, well, if you think you can do better, take a stab at it yourself, and I did. And then that's what I submitted to the committee in my memo that I understand that you have. What I suggested was...and I assume I know what we're trying to do here and that what my language would do would actually help this. I would suggest language that if the committee were interested in actually following up on this would be to add to that existing paragraph (d) in Rule 7, Section 3, something that would say, "Committee amendments, the provisions of which are within the subject matter jurisdiction of the committee which recommends them to a bill it reports to the Legislature, are not nongermane amendments because they strike and replace all the provisions of the bill." I think that states what the intent is. I did intentionally say "not nongermane amendments." I know that maybe is a bit grating on the ear, but I wanted to point out

there that I think the rule would provide that...the rule is not making the amendments germane. They really aren't germane, but they can be considered nonetheless. I suppose it's like an exception to a hearsay rule or something. We're not declaring it to be germane but just to be not nongermane. So it would exist in sort of a twilight between what is germane and not germane. You know when I started here and I remember in the '79 Session people would always say to me, committee amendments are always germane. I always thought well, that was just kind of the oral tradition that was passed on to people in the Legislature. But I never found it in the Rule Book where that was to be the case. So I think that expression, "committee amendments are always germane", was probably embracing the notion that committees are given a great deal of latitude and leeway in how they operate. You know I can think of one case that my committee did, 1990 we had LB1136 that proposed adoption of new Article IV(a), the Uniform Commercial Code on funds transfers. But then as time got short in the process, Senator Landis was looking for a vehicle to combine a lot of insurance bills together and advance the bill from committee. And so the bill was advanced, but all of the wire transfer provisions were stripped out. What came out was an amendment that was strictly insurance. So I think this would probably cover a situation like that. Nobody ever objected. It was just taken care of on the floor. Nobody ever said, isn't that amendment nongermane? It just never came up because nobody ever objected. The only other thing I'd suggest is a discussion in this area can, in a sense, become sort of a venture into a stygian swamp in the sense that we don't know what sort of negative implication this rule change could lead to. You know this is the first time that I can see where the rules would require any sort of examination of committee amendments in terms of germaneness. And whether or not the Legislature wants to go down that road, and I wouldn't be certain, because then by negative implication you raise the issue of what happens if Judiciary Committee has five bills regarding civil procedure in Chapter 25, and then those 5 are rolled up into a white copy amendment offered to 1 of the 5 and then the bill is advanced? Then someone will say, well, technically aren't the committee amendments nongermane to the underlying bill? And then that raises a whole issue that we don't even talk about here. But we can get there if we start talking about committee amendments in the light of germaneness. So I hope that was helpful. []

SENATOR HUDKINS: Are there questions? Senator. []

SENATOR WHITE: Well, I am a rules crank. I seek out a living in a courtroom. One of the concerns I have, doesn't this bill or this amendment at least implicitly, actually I'd say explicitly take the power to determine what is within a committee's jurisdiction from the Executive Committee and put it in the Chair? Not the initial assignment but now aren't we now saying, because it is germane provided...and it's because we're articulating it, that it is within the subject matter jurisdiction of such committee? Historically, that's been a matter, has it not, for the Executive Committee? So now, at least for purposes on the floor, we are going to remove that from the Executive Committee and put it in the Chair. []

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BILL MARIENAU: And the presiding officer would then be required to rule on whether or not it was... []

SENATOR WHITE: It is within the subject matter of the... []

BILL MARIENAU: ...of the...yeah. []

SENATOR WHITE: Which heretofore has always been an Executive Committee decision. []

BILL MARIENAU: And it requires the presiding officer to engage in a sort of subjective judgment there in terms of whether or not that would be within that. A little bit like whether or not an indefinitely postponed bill can be offered as an amendment, say, on General File to another bill. Then the Speaker is required to determine whether or not it actually is or is not the previously indefinitely postponed bill. []

SENATOR WHITE: Thank you. []

BILL MARIENAU: Um-hum. []

SENATOR HUDKINS: Other questions? All right, thank you. []

BILL MARIENAU: Thank you. []

SENATOR HUDKINS: Is there anyone in the audience that wishes to comment on this or the previous one, which I forgot to ask? Yes, Mr. O'Donnell. []

PATRICK O'DONNELL: Madam Chair, just let me...I hesitate to do this because I...a couple of comments real quickly. I just thought it would be helpful to elaborate a little on why the body has, over the years, gone the way that it has. And first of all, Jim is right in that the first determination in terms of a ruling was made in 1994. But as Bill pointed out to you, as long as I've been Clerk of this Legislature, committee amendments have always been germane, whether it's a rewrite of the bill or it's amendatory in nature. All right? So that has been an operating premise for as long as I've been here. Secondly, I think you have to read the germanity rule in conjunction with Rule 3, Section 12, which talks about a committee's ability to consider and correlate bills. And that is, in essence, when you blend those two sections together you attempt to provide a committee with maximum flexibility in terms of, first of all, dealing with its workload, and secondly, bringing forth to the body a complete idea or set of ideas in one bill as opposed to dealing with multiple legislation. So that was the essence for the Withem '94 ruling. I don't want to speak for Speaker Flood, but I think it was certainly part of his thinking last year when he was asked to rule. The last comment I'll make, and then I'll be quiet, is

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that Jim...and I think I owe you an apology because the language that you and I had talked about is a little different than what I see in front of the committee today. When you talk about striking all the provisions, the draft that I remember seeing, and maybe I just didn't look carefully enough at this, so this is my fault, I'll take responsibility for it, was not in that draft that I'd seen. And I think that issue goes to the question that Mr. Marienau was trying to address with you in terms of how...where...you know, whether this is more than you may want to go, farther than you want to go. That's all I had, Madam Chair. I was trying to provide some background to help the committee understand how we got where we are. So I don't know if that was helpful or not. []

SENATOR HUDKINS: Thank you, thank you. I think part of the impetus behind this bill was we're not all going to be here in ten years, in fact none of us are going to be here in ten years. Now Mr. O'Donnell still may be. But we just wanted to have a way to explain what we were doing and why we were doing it that way without...well, why are we doing it this way? And nobody on the floor knew, so...what Mr. Ruby said earlier was I think what we wanted to do. We wanted to put in writing what was being done in practice. All right, Mr. Ruby, number three. []

SENATOR ERDMAN: Madam Chair. []

SENATOR HUDKINS: Yes, Mr. Erdman. []

SENATOR ERDMAN: I had a question for the Clerk before he... []

SENATOR HUDKINS: Oh, we have two more people want to speak. I'm sorry. []

SENATOR ERDMAN: I had a question for the Clerk. []

PATRICK O'DONNELL: Yes, sir. []

SENATOR ERDMAN: You have...your testimony, you had different language than what was provided to us. Could you share what you believe the difference...or if you have a copy of the... []

PATRICK O'DONNELL: Yeah. Let me...the language I had talked about with Jim, Senator, is essentially his language without the provisions...if you were to strike that portion of his that says "strikes all the provisions of the underlying bill." So my thought was, "committee amendments proposed by any committee authorized to consider legislation shall be deemed germane on General File provided the proposed committee amendment is within the subject matter jurisdiction of the committee." Okay? []

SENATOR ERDMAN: Okay. []

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PATRICK O'DONNELL: And I'm glad you asked me that, because the other thing I think you need to think about is right now we're limiting it to General File. And that's the way it's always been applied. I mean, Judiciary Committee could not bring us a multidimensional bill as a Select File amendment. Typically, we don't have committee amendments on second or third readings. So again I think we're talking about General File only here. []

SENATOR HUDKINS: Okay, thank you. Senator Kopplin. []

SENATOR KOPPLIN: Senator Hudkins, I am Senator Gail, G-a-i-l Kopplin, K-o-p-p-l-i-n. I did want to bring a little bit of concern I have or question at least on the need for combining the Speaker and the Chairperson of the Rules Committee. I believe that there is an extremely important position in the Rules Chairperson. I believe it brings us on the floor closer to the process rather than having everything in the hands of the Speaker. I don't know why we're changing it because things have worked well. I think it's been brought up, well, there's some cost savings. I'm not sure of that, but I'll approach that in a later aspect of the rules. So I do have some concerns about that. I believe that we should continue on the way we've been doing it with a separate Rules Chairperson, separate from the Speaker's position. As far as the other bill that has come up, you know, germaneness is an issue. It's never been challenged as I understand, I've never heard it really challenged. But I'm not sure that some Speaker down the road won't say, I don't want to take the point to challenge some of these things. And what we're doing, if we put it in the rules, we're eliminating the next Speaker from being able to make that determination. Thank you. []

SENATOR HUDKINS: Are there any questions for Senator Kopplin? Thank you. Senator Preister. []

SENATOR PREISTER: Thank you, Chairman Hudkins, members of the Rules Committee. This is also the first time I've ever been before the Rules Committee in my 16 years. So it's an honor to be before you. Thank you for your additional work in addition to the other work that you do here. With reference to...is this being recorded? []

SENATOR HUDKINS: Yes. []

SENATOR PREISTER: Oh, my name is Don Preister, P-r-e-i-s-t-e-r, trying to follow the rules. Thank you. The first proposed amendment is the one that I'm glad Senator Kopplin also spoke to. It seems to me that the more we disperse responsibility and workload the better it is for the body. The Speaker is saying he's somewhat neutral on it. I know he's got a heavy workload. I have seen him in action the last session. To take on the additional challenge, I think, is unfair to him or to any other Speaker. But I think it's also important that we have more responsibility by more people so nobody is overloaded. We're all overloaded already. But I think the other area here is we have

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increasingly vested more authority in the Speaker's position because we have had good Speakers who we have trusted. And that's to the credit of the Legislature. But that doesn't mean that in the future things are always going to be that way or that we will always want the Speaker to have more and more authority. I think one of the strengths of a Unicameral is that we disperse that authority pretty equally across committees and across the body. I think that's a good policy. I don't think it's good to do this. Moving on then to the second amendment, the reasoning for doing that as I understood was essentially so that we comply or that we harmonize what we're actually doing in practice with the rules, and I support that. But I think some of the comments by Senator Erdman and Senator Lathrop, but then especially Senator White were on point that if we're going to make the change, I think we need to make sure that we don't allow room for things that maybe we aren't thinking about now. And there, I think, would be some room for people to do things. So I'm not necessarily opposed to conforming practice with rules, but I would look at that very carefully in how it was done. And certainly the Clerk has offered some good advice and Bill Marienau as well. I just...we need to do that very carefully if we're going to do that. And that concludes my comments on these two. []

SENATOR HUDKINS: Thank you. Are there questions? Thank you, Senator Preister. []

SENATOR PREISTER: Thank you. []

SENATOR HUDKINS: All right, now we're ready for number three. []

JIM RUBY: Number three came about because of legislation that was passed last year, as well as current legislation that's pending, both of which are Senator Schimek's, and a discussion by Senator Hudkins and myself with regards to the structure of the select and special committees as they are applied for, as they are set forth in rule. And again, it is a question of just starting the discussion with regards to is there a means within the rules to save money with regards to staff and structure. The two...as you have in the rules, you have two more rule amendments coming up. One is a bill that Senator Schimek passed last year that creates the State-Tribal Committee, which is a very narrow area of the law, but a very extensive one and a very technical one. The other one is...that's offered is the one that would put the Redistricting Committee permanently in the rules, which also is another narrow area of the law that doesn't exist a lot of the time, but once every 10 and 11 years, unless we have something else that crops up. But both of those areas are very technical in nature. Then we also have the Rules Committee, as well as several other committees that have either a legal counsel or a research analyst position, both of which are more expensive than just an LA. And the result is that you don't have...you're not using...the what the question is, are we spending our money wisely with regards to the use of staff within these areas? And do the committees that are in these...that are special and select committees, do they have access to legal counsel for those issues that come before them in a reasonable way? With the Tribal Committee and the Reorganization (sic) Committee, especially with the

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Tribal Committee it is at least my thought that someone is going to have to have some legal counsel experience with regards to tribal law and regards to federal law and how the tribes and the state all...and with the treaties all intermix. That being the case, it would seem that there's going to have to be some access to legal counsel for that committee, but maybe not all the time. Because of the way the statute sets the committee up it won't be...it's not what you would consider a committee that's going to be meeting on a daily basis or on three-days a week basis, like the standing committee. And so it was just an attempt to bring forward to the Rules Committee and to the rest of the body, is there a way at this point in time with two new special and select committees coming on-line that we should be looking at how we...how in the rules we deal with those issues. This was just an attempt at bringing that discussion forward and letting you decide if in fact it's a way you want to...way to conserve money. Currently, Exec Board, Rules Committee and Building and Maintenance have legal counsel positions available for those committees. Executive Board is probably the only committee that has enough what I would consider legal work that would require the kind of expenditure funds to have a legal counsel full-time on staff, Rules Committee certainly doesn't, and I'm not sure about Building, but I would assume, based on my years of experience prior to coming back with Senator Hudkins, my experience has been that the legal counsel position there hasn't ever been a full-time legal counsel position either. And so it would seem that consolidation of those offices into one that would then serve all of the select and special committees would be an extreme cost savings to the Legislature. []

SENATOR HUDKINS: Are there questions? Senator Flood. []

SENATOR FLOOD: Thank you, Chairperson Hudkins. Mr. Ruby, I guess my concern is I don't know that the Rules Committee has the jurisdiction to make this decision if we were interested in doing it. What makes you think that we have the authority in this committee to make substantive changes to the committee structure and the funding of legislative counsel personnel? I guess that's my priority issue, I don't know that this is the right committee to have that discussion in. []

JIM RUBY: Because the rules govern how the committees act and how the...and the conduct of the members of the body. It seems like the rules are the place that you would begin the discussion. There may be other places ending up having to take the ball and carry it, but since the rules are the ones that govern the conduct of the Legislature, it would seem that the rules are the place that you begin the discussions. []

SENATOR FLOOD: I guess my concern would be like Senator Schimek, last year, she went through, I believe, the Government Committee to have the State-Tribal Council Committee put together, if I have that correct. And then she had the full discussion in a legislative bill. As Speaker I worry that if we start handling these matters in the Rules Committee that we're going to tie up the beginning of every session with a bunch of rules changes that are actually substantive that should be ferreted out through a

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committee process where the citizens have seven days to react to a public hearing. And you know I don't...I just...I understand what you're doing and I think you're very creative in your approach and I appreciate that. I just worry that if we start taking these matters under advisement and in jurisdiction of the Rules Committee, we shortchange the citizens and the Legislature from considering this in the normal course of business. []

JIM RUBY: Well, the State-Tribal Committee and the Retirement Systems are the only committees you have that are created by statute. There's a couple of others, the Building and Maintenance as well. But with regard to all your standing committees, they are not created by statute. []

SENATOR FLOOD: Thank you, appreciate that. []

SENATOR HUDKINS: Senator Erdman. []

SENATOR ERDMAN: I believe the State-Tribal Relations Committee went through Exec Board. []

SENATOR FLOOD: That's right. []

SENATOR ERDMAN: Jim, it will provide...the individual, the office of legal counsel shall provide legal counsel and advice to all select and special committees of the Legislature except the Executive Board. And one could make the argument that by the way the Reference Committee is defined they are covered because the Reference Committee is essentially the Executive Board. But they actually are a select committee in our rules. So you have the Committee on Committees, Enrollment and Review, Reference Committee, and the Rules Committee are the four select committees that we have in our rules. The Committee on Committees, Enrollment and Review, Reference is covered by the legal counsel of the Executive Board, and the Rules Committee would be covered, well, obviously by the staff we currently have. But it wouldn't appear that those committees, outside of the Rules, have a need for additional assistance. []

JIM RUBY: Because I don't have as in depth a knowledge of those committees, you may well be correct. []

SENATOR ERDMAN: And I don't know either, I'm just thinking out loud. Special committees: Building and Maintenance, education commission of the states, Executive Board, Intergovernmental Cooperation, and Performance Audit, Performance Audit has additional opportunities as far as staffing that other committees don't, which they again may not need that assistance. Intergovernmental Cooperation, I don't know that you need a legal counsel to approve some of the things that they're going through or whatever. I'm just trying to understand. I know what you're saying, that if we're going to provide...or we're trying to streamline the representation or the staffing that is available

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and make it available to all, it doesn't appear that we have a need for that now. My question is, and you kind of outlined this, how many of these committees currently have staff that they are actually employing for that purpose? []

JIM RUBY: Rules Committee, Executive Board, and I call it Building and Maintenance, but I think it's the Intergovernmental... []

SENATOR ERDMAN: Okay, so of the nine committees, and we've already exempted Exec Board, which takes two of those out, so seven remaining, two of those seven have the need for staff now? []

JIM RUBY: That currently are authorized for staff. []

SENATOR ERDMAN: Okay. []

JIM RUBY: I don't know about need necessarily, but... []

SENATOR ERDMAN: Well, that's...that's... []

JIM RUBY: ...but we have two more that are... []

SENATOR ERDMAN: ...your...your... []

JIM RUBY: What prompted me to think of this is that we have two more coming on. []

SENATOR ERDMAN: Yeah. Your terminology is better than mine, authorized is the right use of the...because we can authorize staff or not authorize staff. And we've authorized additional staff for the Education Committee, so be it. Okay, thanks. []

SENATOR HUDKINS: Any other questions? []

SENATOR ERDMAN: Oh, I...sorry. []

SENATOR HUDKINS: Yes. []

SENATOR ERDMAN: I do have one more. We had talked, Jim, prior that counsel shall serve at the pleasure of the Executive Board. If you have nine committees with nine individuals that have responsibility, and the Executive Board has the same Chair for the Reference as well as the Executive Board. But seven others, you add the Tribal Relations Committee and you potentially add, hopefully, only in the year that we do redistricting in the Redistricting Committee, would all of those individuals go to the Executive Board and lobby the Executive Board for a consensus employee or how do you envision...because in my Committee on Ag or the Legislature's Committee on Ag,

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which I chair, I select the staff for my committee. Currently, if they are authorized, they select the staff for their committee now. Do you have any idea practically how that would be handled or we would just simply go to the Executive Board and the Executive Board would just make a decision on behalf of all those 9 or 11 committees? []

JIM RUBY: The thought is, Senator, is that the Executive Board would perform that function. And I would assume that Chairs that are heavily active and use the full jurisdiction of their standing...or the select and special committees will talk with the Executive Board and say, you know, I think this person would make a good person to handle this; this is a person that I'd like to work with. []

SENATOR ERDMAN: Okay. []

JIM RUBY: But because you are handling a wide representation of individuals within the body, it's not what I would consider somebody's ideal job. []

SENATOR HUDKINS: Further questions? All right. Thank you, Jim, appreciate it. Senator Schimek. []

SENATOR ERDMAN: Do you want to...I think Senator Engel...Senator Schimek. []

SENATOR HUDKINS: Okay. All right, Senator Engel, if you have comments on number one, two or three? []

SENATOR ENGEL: Number three, please. []

SENATOR HUDKINS: All right. []

SENATOR ENGEL: Good afternoon, Senator Hudkins and members of the Rules Committee. I'm Pat Engel. I represent District 17 in northeast Nebraska. That's P-a-t E-n-g-e-l. I'm here to testify in opposition to adding new language to Rule 3 to create the office of legal counsel to the Legislature. My reason is simple. Staffing patterns or administrative function, in my opinion, should not be formalized in our rules. They are and should continue to be developed by the Executive Board after looking at specific work demands and budget considerations. Currently, our staffing pattern allows the Rules Committee and the Building and Maintenance Committee Chairpersons to bump his or her legislative aide up to a legal counsel or research analyst position. And the reason for this is to acknowledge the additional work that the legislative aide has to do for the committee. Now right now the increase in salaries and benefits for these two positions cost the Legislative Council an additional \$23,000 per year. A new legal counsel position could cost as much as \$70,000 when you add in salary and benefit options. As for the other special and select committees, the Executive Board/Reference Committee already has a legal counsel and a legislative aide position. The Performance

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Audit Committee is staffed in the Audit and Research Division which includes one legal counsel position. Now the Committee on Committees does not have a legal counsel position and the Midwestern Higher Education Commission, the Education Commission of the state, and Midwest Interstate Passenger Rail Compact do not even require staff assistants. So I would expect that the Executive Board would take a wait-and-see approach before adding or promoting staff to the new State Tribal-Relations Committee in order to have time to evaluate the actual work demands of that particular committee, because at this point in time these people haven't been appointed. I believe they will be appointed in 2009. So I think we would be jumping the gun to do anything there. So as far as redistricting, it's always been handled in the Research Division and they've always worked on it in between the periods when we have to do the redistricting. So they have the expertise, they have the staff, they have everything there to do it. And another big advantage, they have no political interest in it. They're not...so you don't have to worry about that as far as coming up with a fair redistricting formula. And I think this last year, now we were here during this last redistricting. I think they came up with a very fair procedure. And I don't think there hardly...there's a few I know (laugh), there is a few who are unhappy, but it always happens that way, especially when you eliminate a district up in northeast Nebraska, totally eliminated a district. So we weren't happy with it, but that's the way it worked out as far as the formula is concerned. So it was...we were unhappy, but it was fair. So I'd ask you to consider the fact that staffing needs are an administrative function and should be part of our internal policies and not in our rules. If there is a desire to change the staffing pattern, I am confident that the Executive Board would be willing to consider any requests that come before it. So with that, if you have any questions, I'd be happy to try to answer any. And if you don't,... []

SENATOR HUDKINS: Are there questions for Senator Engel? Seeing none, thank you.
[]

SENATOR ENGEL: Thank you for your time. []

SENATOR HUDKINS: And, Senator Schimek, number 4, 5, 6, and 7 are pretty much the same. []

SENATOR SCHIMEK: I'm on this one right now, Senator Hudkins. []

SENATOR HUDKINS: Oh, you're on this one. Okay, you're ahead of me, I'm sorry. []

SENATOR SCHIMEK: Thank you very much. For the record, my name is DiAnna Schimek, representing the 27th Legislative District. Some of what I have to say was already said by Senator Engel, and said very well I might add. But I thought I could contribute just a little bit. The Rules Committee counsel could be, I mean if we were wanting to save money, could be put under the Clerk's Office or perhaps the Speaker's Office. I tend to think that the Speaker probably shouldn't be the Chair, but I don't know

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that I think that it would be impossible that his staff could staff that. But they probably have plenty to do. I think the Clerk's Office might be a good way to do that, if you were looking to save some money on the Rules Committee Chair. And I might tell you that Performance Audit does have a legal counsel, but that person spends, I don't know, two-thirds of her time doing audits. I mean you really don't have much of a separate position there. I don't know about the State Tribal-Relations Committee. I agree with Senator Engel, we don't know what that committee is going to do. I know what I would do if I were here, but unfortunately I won't be here. And then the Redistricting Committee, I would echo what Senator Engel said. They have staffed the Redistricting Committee very well, and in fact the head of the office has probably more institutional knowledge about redistricting in this Legislature than anybody else--Cynthia Johnson. And so I would...I think everybody feels comfortable with that. I don't think you have to have a special counsel appointed for basically a one-year job. So I would say that the other thing is if you appoint one counsel and expect them, that person to be an expert in all these different areas, you're asking an awful lot, because I can tell you the State Tribal-Relations issues are very complex and even the audit issues. I just...I think that that would be asking an awful lot of one person to handle all those different committees. So thank you. []

SENATOR HUDKINS: Are there questions for Senator Schimek? All right, thank you. Now don't get up, unless somebody else wants to speak? Senator Preister. Okay you can... []

SENATOR SCHIMEK: I can sit down? []

SENATOR HUDKINS: You can stand. (Laugh) []

SENATOR PREISTER: Don Preister, P-r-e-i-s-t-e-r. And I would concur with the Exec Board Chair, Senator Engel. I serve on the Exec Board, I also serve on Committee on Committees, which probably doesn't need a legal counsel. We have used the Clerk and he has provided good guidance with that. I also agree with Senator Schimek, because I also serve on Performance Audit, that we have legal counsel that is doing auditing and supervision and a host of other things. So I think we're utilizing our resources very well. I think that is important. And it's always good to assess and see how we best utilize our staffing and our services. But we as a body shouldn't just operate on the cheap. We should make sure that we've got the staff and that those staff aren't put in difficult or compromising positions. One person can't serve many masters. And as Senator Schimek said, you can't be an expert on all of those things. So I think we need to be cautious before we do something like that and be real certain of where are the needs and how those needs are and may be filled. Thank you again for this opportunity. []

SENATOR HUDKINS: Thank you. Are there questions for Senator Preister? All right, thank you. Senator Kopplin. []

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SENATOR KOPPLIN: Thank you, Senator Hudkins. I'm Gail, G-a-i-l Kopplin, K-o-p-p-l-i-n. I serve District 3, I'm also the Chairperson of the Buildings Committee. And I'd like to just comment on that particular committee for a moment. Keep in mind that the Legislature gives \$20 million of cigarette funds to this...to the buildings group. The Buildings Committee oversees how that is expended. There is not a lot to do, but there is extra workload in my office. My aide gets the title of research analyst, amounts to maybe \$4,000, maybe \$5,000 (laugh) more in salary. To take that away you're not saving money, you're just taking away from somebody and causing me to go find somebody else to interpret things. I just think it is not a major thing that we should be concerned about. We're not spending huge amounts of money, we are just paying people for what they do. And I would hate to see that changed. Thank you. []

SENATOR HUDKINS: Questions? Thank you, Senator. Anyone else? All right. Mr. Ruby. []

JIM RUBY: This is for...I'm going to take 4, 5, 6, and 7 all together, because they were all brought by the Performance Audit Committee and were brought to Senator Hudkins for consideration by the committee. These are offered in order to give a little more clear delineation with regards to what at least the Performance Audit Committee can do with regards to confidential information that comes into their hands. This came about mostly because of the discussions that were held with the Ag Committee held a closed meeting with regards to review of a draft document before it was released to the public as a final draft. And because of kind of the slight storm that came up out of that the Performance and Audit Committee began to reconsider some of the documentation that they receive when they do a performance audit. And a lot of the documents they receive are confidential information, especially when they go into places like the Department of Corrections, some of the health service facilities that we have. And so in their processes they have a lot of private documents and confidential documents that they have to review. And so they brought the changes to Rule 3, Sections 5, 15, 20, and 5(c), and (c)(iii) in order to try and give themselves a little clearer protection within the rules as to what their...and guidance with regards to what they can do with regards to their review of those documents. And I believe they are here to also talk about their needs. []

SENATOR HUDKINS: Questions? Senator White. []

SENATOR WHITE: Under this provision, could other members of the Legislature obtain copies of the testimony taken by a committee after a hearing was closed? []

JIM RUBY: Okay, now we're talking just about the legislative Performance Audit Committee? []

SENATOR WHITE: Right. []

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JIM RUBY: It's only their sections that are being amended. []

SENATOR WHITE: I understand. []

JIM RUBY: Okay. And your question is, could a committee member...or a member of the Legislature, not of that committee,... []

SENATOR WHITE: Obtain transcripts of the testimony, if they want, if it was held under a confidentiality provision? In other words, or could they attend it if they wanted to watch? []

JIM RUBY: I think under the way this is drafted that could be...would be a decision of the Chair of the committee. []

SENATOR WHITE: So in other committees... []

JIM RUBY: Because I don't think...I'm not necessarily sure that the senator, him or herself, would be declared a member of the public. []

SENATOR WHITE: And then I note that as drafted, in order to invoke the confidentiality provision it needs to be a majority vote of the members, not a quorum. Is that correct? []

JIM RUBY: That's the way it's written, yes. By a majority vote of all of its members. []

SENATOR WHITE: Okay. And that was intentional, I assume? []

JIM RUBY: That's my understanding. []

SENATOR WHITE: Thank you. []

SENATOR HUDKINS: Thank you. Senator Schimek. []

SENATOR SCHIMEK: Thank you, Madam Chair, members. For the record again, my name is DiAnna Schimek. I would like to clarify one thing. And that is the discussion in the Performance Audit Committee of this particular issue had been ongoing for quite a time. It didn't have anything to do with what the Ag Committee was or wasn't doing. And in fact we had already planned a hearing for the public on this particular rule proposal, these particular issues. And it occurred about the same time, I think, that the Ag Committee was having its hearing. So it wasn't anything that we felt compelled by anybody but ourselves to do. And we have always been concerned that we use this closed meeting provision very carefully. And we invited the news media actually to come to that hearing and comment. I think that what distinguishes perhaps the

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Performance Audit Committee from one of the other regular standing committees is that we get allegations, if you will, about different agencies. And we believe that in order to make a good decision, let me rephrase that. We believe that an agency shouldn't be subjected to fault accusations, or accusations that really don't have a lot of substance, or that are so insignificant that they're really not that important. So we have always discussed potential audits in closed session, again with the vote of the committee as was recognized. We wanted to simply, I guess, put in statute what has been the practice of the committee. Now we don't...when we go into closed session it's just a discussion among committee members. We aren't actually taking testimony at that point, we're just having a discussion about a potential audit or preaudit, if you will. When we hear back from the Audit Committee their findings in a preaudit or an audit, that is also discussed in closed session. It is not until the committee adopts a report that the information is actually released to the public. In other words, we think that the findings are important for the public to know, but not necessarily that you disclose all of these different questions about agencies, I guess, to the public, because so many of them are never going to go anywhere. I hope that I've covered all the points that I need to cover. But I'd be happy to answer questions, if I might. []

SENATOR HUDKINS: Senator Erdman. []

SENATOR ERDMAN: Senator Schimek, in 2007 approximately how many times did the Audit Committee meet as a committee? []

SENATOR SCHIMEK: Oh, four or five times I would guess, maybe. []

SENATOR ERDMAN: And approximately how many times were in closed session of those four or five, or was closed session included in that meeting? []

SENATOR SCHIMEK: There would be parts of those meetings that might be closed, and then you come back into open session and make your...and do your voting, that kind of thing. []

SENATOR ERDMAN: Okay. Let me ask you about number 7, about the priority bill. []

SENATOR SCHIMEK: I don't...I'm not...I don't...not privileged to your numbers. Which one... []

SENATOR ERDMAN: All right, let me...Rule 5, Section 5, sub (c). []

SENATOR SCHIMEK: Okay. []

SENATOR ERDMAN: Currently, the Performance Audit Committee may designate two priorities bill introduced by the committee or any senator as a result of a performance

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audit, but the principal introducer must concur with the designation as a priority bill and withdraw a designation once made. []

SENATOR SCHIMEK: Right. []

SENATOR ERDMAN: So in other words, what Senator Beutler proposed to allow the Performance Audit Committee to do in carrying out its duties, should something arise in an audit, is reflected here, because the Audit Committee doesn't receive bills, and every other committee must have bills referenced to them to be able to designate a priority bill. []

SENATOR SCHIMEK: That is correct. []

SENATOR ERDMAN: And when I was Chair of the Enrollment and Review Committee, I tried to receive my priority bill designations and was told that that's not allowed. What is the issue that comes up that makes this rule change necessary? Has there... []

SENATOR SCHIMEK: I'm glad you asked. []

SENATOR ERDMAN: I mean, I'm just trying to understand... []

SENATOR SCHIMEK: Right. []

SENATOR ERDMAN: ...because it would appear that the only reason that the Performance Audit Committee would designate those bills would either have been introduced by the committee or as a senator, which I believe Senator Beutler introduced them or you have introduced them or a member of the committee introduced them resulting from that. I mean, I'm trying to understand why it has...why this needs to be changed or broadened to allow this? []

SENATOR SCHIMEK: I think all that we're trying to do here is to say we can introduce bills not only about an issue coming out of a performance audit, but about the performance audit process itself if it needs to be clarified or changed. And I did not point that out in my opening remarks, so thank you for raising that. []

SENATOR ERDMAN: So...okay. So then that's the addition. []

SENATOR SCHIMEK: That's right. []

SENATOR ERDMAN: To go back to the question of why should it be...is it feasible that some other person would introduce legislation, some other member of the Legislature,... []

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SENATOR SCHIMEK: Yes. []

SENATOR ERDMAN: ...that would introduce legislation, has no idea what the Performance Audit Committee did that you thought would be a good idea. Is that why you want it to be open to anybody, because chances are, and I was on the Performance Audit Committee for two years, the committee would introduce the response, or the Chair of the committee or someone on the committee would introduce the response or would change the process as a result of the committee. I'm trying to understand what...I mean, it doesn't really matter. I'm just seeking to understand the... []

SENATOR SCHIMEK: Right. []

SENATOR ERDMAN: ...the justification for broadening it, that it doesn't have to be a bill introduced by the committee or a senator resulting from that or from the process. It could be any bill that you wanted to, as long as it pertained to that subject? []

SENATOR SCHIMEK: Correct. []

SENATOR ERDMAN: And that you're just looking for freedom. []

SENATOR SCHIMEK: And, in essence, I think that may have been actually the practice. If you recall, we designated the bill by Senator Raikes, I want to call it the STARS bill because I don't remember the exact number, dealing with the testing over at the Department of Education. We designated that as one of our priorities. []

SENATOR ERDMAN: But that came out of a...that came out of an audit, though. []

SENATOR SCHIMEK: Yes, it did. []

SENATOR ERDMAN: Okay. []

SENATOR SCHIMEK: Yes, but it wasn't...we introduced a bill that referred to that particular audit, but we decided to go with Senator Raikes's bill as our priority. []

SENATOR ERDMAN: But it still fell under the existing rules that any senator... []

SENATOR SCHIMEK: Yes. []

SENATOR ERDMAN: ...resulting from an audit. And I, you know, I'm just looking for the reason. Maybe the idea... []

SENATOR SCHIMEK: Maybe I'm not... []

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SENATOR ERDMAN: I think you're explaining it well, I'm just... []

SENATOR SCHIMEK: Okay. Well, maybe I'm not understanding the question. []

SENATOR ERDMAN: The issue appears to be that the committee doesn't feel like...maybe feels that this is too narrowly drawn and that they should be able to name any bill relating to the subject matter. And that's a good enough justification. []

SENATOR SCHIMEK: I guess that's correct. []

SENATOR ERDMAN: I'm just trying to understand what the... []

SENATOR SCHIMEK: And we want to make sure that we can improve the performance audit process... []

SENATOR ERDMAN: Yeah, I see that. []

SENATOR SCHIMEK: ...itself, if need be. []

SENATOR ERDMAN: Okay. []

SENATOR HUDKINS: Senator White. []

SENATOR WHITE: Senator Schimek, would you have a problem if a rule was entered that at any time testimony was obtained during confidential hearing that any member of the Legislature, any senator could by right be present and/or get a copy of the transcript to review? []

SENATOR SCHIMEK: Senator White, I'm trying to search my little memory bank here. And I don't recall taking testimony in the closed session. []

SENATOR WHITE: The rule though does provide for the taking of testimony in a closed session now. And, of course, we're not talking about what has happened in the past. As you know, as a member of the Rules Committee, we have to look at how these rules will play out... []

SENATOR SCHIMEK: Exactly. []

SENATOR WHITE: ...over the hopefully decades. And so I am concerned about in camera testimony. I do understand the necessity for it sometimes. But I...before you authorize... []

SENATOR SCHIMEK: You realize that is already in the rules. []

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SENATOR WHITE: Is it that we can? And that's what I was asking is... []

SENATOR SCHIMEK: The Audit Committee is already authorized to hold hearings at the committee's discretion to receive testimony. []

SENATOR WHITE: Right. []

SENATOR SCHIMEK: That's old language that's already... []

SENATOR WHITE: Right, but I'm new to the committee. []

SENATOR SCHIMEK: Oh. []

SENATOR WHITE: So my concern is I worry about star chamber court systems. []

SENATOR SCHIMEK: Yeah. []

SENATOR WHITE: They've been abused, not here obviously, but in the past. And what provisions do you understand are available for senators to either be present or to review testimony? []

SENATOR SCHIMEK: I'm going to ask the head of the Audit Division, if I might, to come up and maybe shed a little light on the answer to your question, if she would. []

MARTHA CARTER: Thank you. For the record, my name is Martha Carter. I'm a legislative auditor, and in that position I manage the Performance Audit Section. It's an interesting question that you've raised, Senator White. And I was trying to think. Off the top of my head, my first concern would be that there are parts of the process, including the working papers of the Audit Committee, and the draft report that are not public until they are released at the end of the process. And historically, the committee has, at least on some occasions that I can recall, turned down requests from individual senators to even see the draft report before it's released, because the statutory language says the report will be released to the Legislature and the public, and it's always been read as meaning at basically the same time. So I can't really give you an opinion. I would want to think about it. I would want to look at those issues a little bit. []

SENATOR WHITE: The report is one thing, and I can understand the need certainly for the committee to be able to negotiate, to look at drafts, and not have them leaked out until the committee has had a chance to formulate. That is one thing. []

MARTHA CARTER: Um-hum. []

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SENATOR WHITE: But the testimony and the evidence... []

MARTHA CARTER: Um-hum. []

SENATOR WHITE: ...on which the committee is deliberating, historically,... []

MARTHA CARTER: Um-hum. []

SENATOR WHITE: ...in the court system has been treated entirely differently. []

MARTHA CARTER: Um-hum. []

SENATOR WHITE: And it has always raised huge warning signals whenever courts want to close, or any kind of the overview of a body want to close to evidence. []

MARTHA CARTER: Um-hum. []

SENATOR WHITE: Juries, for example, always are confidential, nor can you ask, nor will they tell you where deliberations stand. But the evidence on which they base their judgment has always traditionally been open to the public. I do again understand those rare cases... []

MARTHA CARTER: Um-hum. []

SENATOR WHITE: ...where it needs to be shut. []

MARTHA CARTER: Um-hum. []

SENATOR WHITE: And I'm not disputing that. []

MARTHA CARTER: Um-hum. []

SENATOR WHITE: But I wonder what is our policy with regard to other elected senators having access to the testimony? []

MARTHA CARTER: I can't give a perfect answer to that, but generally speaking there has been no distinction made between what was available to senators who were not members of the committee and what was available to the public in terms of general practice of the committee. []

SENATOR WHITE: Now traditionally in this kind of evidence a court, for example, would give you a transcript or may give it to you, but then enter an order, and the Executive Committee I'm sure...Board could do that as well, that a senator cannot reveal it. []

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MARTHA CARTER: Right. []

SENATOR WHITE: I mean there can be policies to continue to keep it confidential. []

MARTHA CARTER: Right. But... []

SENATOR WHITE: I'm just concerned about anytime we address this issue we're not looking at any kind of checks and safeguards. []

MARTHA CARTER: One other thing...I think one of the reasons it's difficult to get at your concern specifically is that, generally speaking, the audit reports contain the evidence that's been gathered during the audit. However, for example, we've...we did an audit of the employees' retirement system in which we interviewed all of the staff. Those were not closed...well, it wasn't a meeting of the committee. It was our staff interviewing their staff. In the final report we only reported aggregated results. Now if a senator came to us and asked if they could read the individual interview notes, I don't know. I don't know if that's appropriate or not. []

SENATOR WHITE: Well, again I would tell you, I mean, you're looking at a different issue than the one I'm trying to reach to you on,... []

MARTHA CARTER: Um-hum. []

SENATOR WHITE: ...which is testimony in front of a committee. []

MARTHA CARTER: Um-hum. []

SENATOR WHITE: Okay, I mean that's a different class. I mean, I guess that you do raise a good question and one we can look at. But testimony before hearings,... []

MARTHA CARTER: Um-hum. []

SENATOR WHITE: ...there's a strong presumption in Nebraska all hearings shall be public. And so I'm just asking, what are the safeguards? If, for example, you come out with a report one of the concerns maybe did the committee fairly represent conflicting testimony... []

MARTHA CARTER: Um-hum. []

SENATOR WHITE: ...on a key issue in the report? []

MARTHA CARTER: Um-hum. []

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SENATOR WHITE: So I guess that's my concern. []

MARTHA CARTER: And I think they are very good concerns that you raise. I think the difficulty in answering them is that we are talking hypothetically because we haven't been in that situation. I can't speak for the committee. I could say from a staff perspective I think when we drafted this language we were trying to be inclusive and include everything that the committee might potentially do. If you wanted to take the part about the hearings out, I don't know that that would greatly effect, practically speaking. []

SENATOR WHITE: Well, I don't want to say that a committee couldn't have...I mean if you have serious allegations by an employee of an agency about a director of the agency and they want to testify to the committee, I can see a reasonable basis that you might want that, under certain circumstances, to be held confidential. I don't have a...necessarily have a problem with that. I just want to know what are the safeguards? []

MARTHA CARTER: Um-hum. []

SENATOR WHITE: Who is a member of the public? []

MARTHA CARTER: Um-hum. []

SENATOR WHITE: Can the members of the body, other elected senators get access to the information because we may have to debate the issues in the report, things like that. []

MARTHA CARTER: Yeah. The short answer is I don't think that there are...there is nothing in writing, certainly, about what those protections would be. []

SENATOR WHITE: And the problem is whenever we tend towards going to confidentiality, then you need those protections in place I would submit. Do you agree? []

MARTHA CARTER: Um-hum. I do. []

SENATOR WHITE: Thank you. []

SENATOR HUDKINS: Senator Erdman. []

SENATOR ERDMAN: Just so that I'm clear. Senator White, is it the hearings provision, where you would receive testimony? Is that what you referring to? Are you talking at any time when they go into closed session? []

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SENATOR WHITE: No, it's the...well, there are concerns any time. You know, obviously, public's business is not done in the public. So I would say, yes, I...but particular the testimony that is the basis for what the committee decides to do. And I'm not saying that they shouldn't be able to have confidential hearings. It's just that that is an area that traditionally in a free society we have to be extremely careful that when we do do it we have safeguards so that, you know, for example, you may disagree with what a committee does. You want to check the basis for the recommendation. Can committee Chairs say, you can't see that testimony? I mean that just does not seem to me to be a very good way to do business. []

SENATOR HUDKINS: Other questions or comments? []

MARTHA CARTER: Madam Chair, could I just make one other comment? Just to be clear, currently the only type of hearing...the primary type of hearing that the Performance Audit Committee holds is on a draft report. And at that point statute requires that everything related to that report be made public. So we can talk more if you'd like to. I'm just...I'm having a hard time envisioning when the committee would meet in closed session to take testimony, because it...that would be used as evidence. []

SENATOR WHITE: If the rule says that. But the rule would allow it. If you read the language, the rule or the rule allows it. And at that point in time if the rule allows it, the committees have not abused it you're saying. And I agree. []

MARTHA CARTER: Actually, I think the point I'm making is that the rule allows for hearings to be held in public. I don't know if we could use that as evidence in an audit report. That would be the question, I guess, I'd have to consider. []

SENATOR WHITE: Well, but that might be part of the concern. There may be testimony reflected in the audit report that was held in camera. I mean it goes both ways. []

SENATOR SCHIMEK: If I might, Madam Chair,... []

SENATOR HUDKINS: Senator Schimek. []

SENATOR SCHIMEK: Senator White, this committee doesn't operate like other committees do. I mean, as I told you in the beginning, I can't think of a time when we've ever had a public hearing on something like you're talking about. When we meet we hear the audit reports for the progress of the reports from the staff. And we are not...we, the committee members, aren't questioning the employees or doing all of that kind of thing. []

SENATOR WHITE: The Audit Committee maybe. []

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SENATOR SCHIMEK: Well, it's the audit staff, yes, that's doing that,... []

SENATOR WHITE: Yeah. []

SENATOR SCHIMEK: ...not the committee. []

SENATOR WHITE: But the rule doesn't restrict you to that,... []

SENATOR SCHIMEK: Okay, well, your point...I understand your point. []

SENATOR WHITE: ...Senator. I mean, again I'm looking at the rule as how it could be applied, not how it has been applied. []

SENATOR SCHIMEK: Okay, but do you...you do understand that the committee's... []

SENATOR WHITE: You get...the Audit Committee comes and your people come and talk to you about what they discovered. []

SENATOR SCHIMEK: Right, it's different from a lot of other committees. But we'd be happy to work with you. []

SENATOR WHITE: But the committee, but the committee could, for example, ask an employee to come and testify... []

SENATOR SCHIMEK: Yes, it could. []

SENATOR WHITE: ...and hold it confidential. The rule clearly allows it under the way it is phrased, the proposed rule. In order to protect confidential information pertaining to a potential or actual performance audit, the committee may, by a majority vote of its members, determine that a hearing or any other meeting should not be open to the public. Right there. It's nothing...and the rules would allow. So then the question is, if you can do that, what safeguards are present? []

SENATOR SCHIMEK: Maybe to save some time here for the committee, maybe we should talk with you after this and see if there is a better way of putting the...as you know, the language has been in there for quite a while. But we'd be happy to hear some suggestions from you... []

SENATOR WHITE: No, I think that's new language. Isn't the underlined part the proposed new language, Senator. That is proposed new language you're asking us, by amendment, to add. []

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SENATOR SCHIMEK: Oh, I'm sorry, you're right. Okay. []

SENATOR WHITE: So I am reluctant... []

SENATOR SCHIMEK: Okay. []

SENATOR WHITE: ...to add new language in this situation without understanding it. []

SENATOR SCHIMEK: Let's talk about this then, okay? []

SENATOR WHITE: Okay. []

SENATOR SCHIMEK: I'd be happy to talk with you about it. []

SENATOR HUDKINS: Senator Erdman, did you have a question? []

SENATOR ERDMAN: Just a point of clarification. The difference between Rule 3, Section 5, sub (c), sub (iii) is that it is not a rare or extraordinary circumstance, it's within the natural course of business of what the committee operates. All other committees are bound to rare and extraordinary circumstances to invoke either Rule 3, Section 15, sub (b), or Rule 3, Section 20, sub (c), sub (ii), which is the existing language. The key distinction that I draw between what other committees have and what the Performance Audit Committee is seeking is that technically what the Performance Audit Committee does is not rare or extraordinary, it's within the normal course of carrying out your business. And under the existing rules you're not afforded the same opportunities other committees are because you're not like other committees. []

SENATOR SCHIMEK: That's correct. []

SENATOR ERDMAN: That doesn't alleviate your concerns, but that's the rationale as I understand it between the difference in Rule 3, Section 5 for the Performance Audit Committee and the existing authorities of other committees regarding meetings or hearings of those committees being in closed session. []

SENATOR HUDKINS: Any other comments? Okay, thank you. Does anyone else wish to comment? []

SENATOR PREISTER: Thank you, Senator Hudkins. Don Preister. I hadn't intended to testify on this, but as a member of the committee I appreciate the comments of Senator Erdman in the rule that was brought forward by the media. And this is an attempt to at least address that. I understand Senator White's concern. Your question is, what safeguards? This doesn't get totally to the issue that you're saying. But in the nature of the discovery and going out and asking questions and doing the actual audit,

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information is compiled. And once that is brought back, before it's ever released it is given back to the agency and to the people involved for their comments. That is a safeguard so that it hasn't been released until we get their comments. Those comments can be incorporated into that report. And once that's done and decisions are essentially agreed to, then it's released. []

SENATOR WHITE: That is very... []

SENATOR PREISTER: That is a safeguard that I think is one of the things that might answer what you're asking. []

SENATOR WHITE: It is an incredibly important one, because the right to confront and... []

SENATOR PREISTER: Right, exactly. []

SENATOR WHITE: ...cross-examine your accuser is tied into open hearings. And here that...by rule apparently the committee has had that, that you can do that. At the same time, though, I'm still concerned, you know, for other aspects. And obviously it's never been abused. But again, many people are leaving... []

SENATOR PREISTER: Right. []

SENATOR WHITE: ...and we're starting to look at rules for an institution that, unfortunately, is going to lose a lot of the memory and past practices. []

SENATOR PREISTER: I agree and those safeguards are important. And as somebody who's championed open meetings and open records laws, I concur. And at the same time, as we did in the Ag Committee, there are times when during the course of an investigation you need to do some things in a closed session, balancing that and making sure those safeguards are there. I wanted to point out at least that we do give that opportunity to those people. []

SENATOR WHITE: That's very important and I appreciate that. Thank you. []

SENATOR PREISTER: Sure. Thank you. []

SENATOR HUDKINS: Thank you. Anyone else? All right. Mr. Ruby, number 8. []

JIM RUBY: Number 8 is to bring back into the permanent rules the redistricting rule and the Redistricting Committee that was in place in 2000. Senator Schimek has LB402, I believe, that would establish the Redistricting Committee in statute. During discussions on that bill last year, I believe, Senator Erdman, Senator Schimek, and several others I

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think had a visit with regards to whether or not...whether it needed to be in statute, or whether to put it in the permanent rules. And so this is the...out of that discussion came the decision to at least propose to the committee that starting now that this...as the rule existed in 2000, to put it back in the permanent rules so it just continues to roll with the Rule Book and can be adopted every year. So when 2010 arrives the rule is already in place. And at least if there is a discussion it will be a discussion and amending the rule as opposed to starting from scratch or starting from some other position. And the interesting part in doing some research is, if I'm not mistaken, it takes more to amend the rules of a vote on the body than it does to pass the bill. So I think it takes 30 votes to amend the rules and only 25 votes to get rid of the statute. So by putting it in the rules you actually give it larger protection than if it's in statute crazily enough. So that's the purpose. []

SENATOR HUDKINS: Senator Erdman. []

SENATOR ERDMAN: Jim, the proposal before us, fourth paragraph, excuse me, fifth paragraph starting with the following criteria,... []

JIM RUBY: Yes. []

SENATOR ERDMAN: ...those were adopted by resolution, were they not? And the previous language would have actually been in the rules? []

JIM RUBY: In 2000, correct. []

SENATOR ERDMAN: Okay. So the rules that were in place for the redistricting process in 2001 would be Section 6 through the fourth paragraph, which starts with, "The committee shall adopt administrative guidelines." And after the word "challenged" in that paragraph, that would have been the end of the actual rule? And then the additional language that follows governing the Legislature, the House of Representatives, Public Service Commission, Board of Education, we adopted those are legislative resolutions on the floor, correct? []

JIM RUBY: That's correct. []

SENATOR ERDMAN: Okay. []

SENATOR HUDKINS: Other questions? All right. Does anyone want to speak to this issue? Senator Schimek. []

SENATOR SCHIMEK: Yes, thank you, Madam Chair and members of the committee. For the record, my name is DiAnna Schimek. And first of all, I want to thank the Chair and the committee counsel for working on this. I think it is something that we definitely

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need to be concerned with. And we definitely need to probably establish some guidelines. I started working on this issue, I guess it was three years ago now. And LB402 is actually the second bill. And I started out with two basic ideas. One is that having been here in 1991 for the redistricting and seeing how shaky a process that was, and then being here in 2001 and seeing how good the process was, that we needed to maybe try to put some of that into language for the Legislature to follow in 2011 because at that time there is a possibility that we might possibly have two people here who have ever been through redistricting before, and that would be Senator Ashford, if he's reelected, and Senator Dierks, if comes back again. Otherwise, we'll have no one. And you know, you spend a lot of time thinking about redistricting when it comes along. And the more things that we can have in place, I think, the better we would be. The second part of that bill, and I'm not going to go into great detail, don't panic, the second part of the bill would have incorporated the Iowa model to fit in with that so that it would be an independent body that actually draws the lines for the maps. The bill did come up last year. We spent about an hour before lunch one day on it and Senator Erdman and I, I think, were the only two people who talked on it. I don't think the body was particularly interested at that point or I don't know. I just didn't get a feel for the bill. I believe that the bill is the best mechanism and that you have three rounds of debate on it, so you have plenty of time to help people understand the issue. It would be better than the rules procedure, in my opinion. I did talk with Senator Erdman this morning. And I'm going to work very hard with him to see if we can't come up with some kind of an amendment to the bill that would basically take out the Iowa model and keep the rules and procedures that we used in 2001. Now having said all that, I don't believe, and I'm going to go to the language now that you have before you, I don't believe that this should be a special committee. That denotes an ongoing committee, which I don't think that we need to have. Granted, it would be nice for people to know ahead of time that they're going to be on that committee and they can be thinking about it, but there aren't any guarantees, especially with the eight-years term limits. I also think that you avoid that whole special committee counsel thing if you don't establish it on a long-term basis. I think that the Exec Board did such a fabulous job last year of handling this that the Exec Board should handle this matter and that it should be done only once every ten years. And that's something that I worry about with this kind of a rule and establishing a permanent body is that you might have some bright new senator come in and decide they wanted to do it in an off year, like they did in Texas, remember the mess in Texas, congressional redistricting. For those of you who haven't been through it, it just tears up your session in so many ways because it takes so much time and energy and everybody focuses on that and really to almost the exclusion of a lot of other issues. So making it a special committee might lead to that kind of thing. The bill, LB402, specifically prohibits it, except every ten years and every year that would basically end in one. I don't know that redistricting guidelines...I don't think they've ever been placed in rules before like, I think, was it Jim that mentioned that we did it in the form of a resolution that went to the body. And then the Redistricting Committee adopted the process rules, the Redistricting Committee itself. There are some minor deviations in

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the language in this that are little bit different from last year. And in one place it talks about county lines. And there is a whole section there that is left out, and I'm not going to go into all of that right now, but that could be added back in if you are going to adopt this. And then when it gets to congressional districts and legislative districts it recognizes, this rule recognizes that both of those could change. But what it doesn't recognize is that all the other districts could possibly change in number as well. So you would want to address that particular problem. I think the other main point I'd like to make or the last main point is that these rules do not call for public hearings at all. And that was something that we insisted on last time. And it was difficult to work it in because you don't get your census figures until the middle of March maybe. And you're going to be done the first of June, and you have to not only draw the maps and craft the language and have the discussions, but then you have to schedule public meetings, one in each congressional district. But I tell you that was very, very helpful. And I think the public was far more pleased with the process last time than the time before, Senator Flood, as you probably well...no, you don't remember, you were just a kid. []

SENATOR FLOOD: Yes, I do remember that. You carved up Madison County. []

SENATOR SCHIMEK: Yes, we did. (Laugh) And for those of you who don't remember that, Senator Flood remembers it very well, but our redistricting plan in 1991 actually got thrown out and we had to go back to square one. So I like a lot about this, but I don't...I'm not sure this is the way to do it. And I think that if we decide to come back later and do something like this, it's fine. But I would like to be able to go ahead and put it in statute and have that discussion on the floor that would help everybody understand the issues. So thank you, Madam Chair. []

SENATOR HUDKINS: Senator Erdman. []

SENATOR ERDMAN: Senator Schimek, the questions that I asked Mr. Ruby were pointed because we would not put into the rules the LRs from 2001. I believe what I asked Jim to do last year, when it was submitted to the committee, is provide a copy of what the Legislature did. And he did all of that, he did the rules as well as the LRs, so that we had all of that. And it would be my intent that, if the Rules Committee or the Legislature adopts a rule, it would simply adopt the language referring to the committee, and the criteria would be determined, as we did in 2001, by legislative resolution in outlining the guidelines and parameters that we would use to determine the boundaries of each of those districts. So some of the concerns that you brought up, I think, are valid. I think, however, they are probably a resulting of me not being as clear and asking Jim to provide that to the committee as to what my intent was. I think as you well know your bill on General File is an anchor. That doesn't mean that it couldn't be drawn up and floated to a dock somewhere, but I've got a motion to recommit that bill to the Executive Board, because when the Executive Board heard the bill, that's the motion that's pending, there were issues that were brought up in that hearing that the

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committee decided to ignore... []

SENATOR SCHIMEK: Right. []

SENATOR ERDMAN: ...and decided to send it to the floor, as we've had this conversation, and say we'll fix it on the floor, which to me is an aberration and I can't believe that the committee agreed to do that. But that's what the committee chose to do. []

SENATOR SCHIMEK: I agree with you. (Laugh) []

SENATOR ERDMAN: The second motion that's filed is an amendment that would gut the provisions of Iowa and put in place general provisions relating to a committee, and would still require a rule to be implemented to show how the committee would operate,... []

SENATOR SCHIMEK: Right. []

SENATOR ERDMAN: ...similar to any other committee that we would have. The third motion that I have is a motion to indefinitely postpone your bill... []

SENATOR SCHIMEK: Right. []

SENATOR ERDMAN: ...because I still firmly believe that the process should be outlined in our rules, not in statute. And if there is an opportunity, as we've discussed this morning, to negotiate what provisions could be in statute, I think we can agree on some of those things. But I firmly believe, and I think the rules could be written as we spoke this morning, that this language, even if it is a special committee, could be written to state that it only happens once every decennial redistricting process in the '01 year, similar to what your bill is intended to be drafted, and that that process only happens then. Your testimony today says that you believe that the Executive Board should...could handle it. The Executive Board didn't handle it in '01. They appointed a special committee, and that gave them the flexibility, because as we talked... []

SENATOR SCHIMEK: I didn't mean that. []

SENATOR ERDMAN: I know, I'm just... []

SENATOR SCHIMEK: That's what I said. I meant...what I meant to say is I thought that the Executive Board could do as they did last time and appoint the committee and do those kinds of things. So... []

SENATOR ERDMAN: But they have no express authority to do that, unless the rule

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allows them to do that. And that's why... []

SENATOR SCHIMEK: Right. []

SENATOR ERDMAN: ...there would need to be a rule offered to allow the Executive Board to do what they did in 2001. So we have tried to schedule a meeting. I think we've got... []

SENATOR SCHIMEK: Right. []

SENATOR ERDMAN: ...a meeting scheduled for Friday morning with your office, I think. Cynthia will be there, and Christy and others that were a part of the drafting of your bill,... []

SENATOR SCHIMEK: Right. []

SENATOR ERDMAN: ...as well as those that were here in 2001. But I do agree with you that my experience in 2001 went well. []

SENATOR SCHIMEK: Um-hum. []

SENATOR ERDMAN: I think your comment about not having hearings is a valid one. I think that's the main obstacle and concern that people had. I think the other issue was the access to the maps. []

SENATOR SCHIMEK: Right. []

SENATOR ERDMAN: I think part of that was due to the untimely response of the information we were trying to rely on, and we didn't get it in a timely manner to be able to return the maps back to the public so that they knew what we were doing. And you had folks from Omaha and other places driving to Lincoln for the hearing, just to see what the map looked like, not necessarily to testify. So with the new technology that we have and hopefully the efforts you're doing and whatever I can contribute in the Legislature to preparing ourselves for that next cycle, we'll be better prepared to make sure the public is more informed. But I think it could be worked out. But I still firmly believe that the process should be outlined in the rules. And if there needs to be general provisions authorizing the Research Division or others to be able to gather that information or prepare for that, that we can work on that. And I look forward to that discussion that we're going to have later this week. []

SENATOR SCHIMEK: I do as well. Thank you. []

SENATOR HUDKINS: Anyone else? []

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SENATOR SCHIMEK: Thank you. []

SENATOR HUDKINS: Anyone in the audience wish to comment? Senator Preister. []

SENATOR PREISTER: Don Preister, P-r-e-i-s-t-e-r. I appreciate the dialogue. And I'm glad that Senator Erdman and Senator Schimek are going to going to visit over this, because I, too, have some questions about the public hearing process, the statute portion versus the rules portion. Having said that and having heard the discussion, I'm glad that that's going to continue. The one thing that I will discuss that I think is important and that is under the United States House of Representatives portion we have in there, as we have done and as I think federal statute requires, allowed for, in (b) "Population among districts shall be as nearly equal as practicable, that is, with the overall range of deviation at or approaching 0." And we have been able to accomplish that and we have done so and I think that's the way it should be. However, when we get down to the Legislature, under "b" we have in place, "In establishing new legislative district boundaries, the Legislature shall create districts that are as nearly equal in population as may be. No plan shall be considered which results in an overall range of deviation in excess of 10 percent." Thirty-five thousand people live in a district, ten percent is three thousand five hundred people, that's likely one thousand households. How fair is it to one district versus another to have perhaps even more than 1,000 households? How fair is it to those constituents who want proportional representation, how fair is it to the people who represent them to have a disproportionate figure? How fair is it to a candidate having to reach far greater numbers of people than another candidate? I think that we should be at zero the same way. However, given the fact that there are areas of contiguousness in neighborhoods and some places that you just really would have difficulty with the census tracks and with the neighborhood configurations possibly in rural areas but particularly in urban areas where that may be possible, I would suggest that we go with 2 percent. And even 2 percent is, I believe, 700 people. That still allows for a neighborhood or a section or some area, a school district, where you have those boundaries. Seven hundred, I think, is more doable. Ten percent, I think, is just too excessive, particularly when we do the congressional districts at zero, I don't think it's a good policy to establish. That's my case. Thank you. []

SENATOR HUDKINS: Questions for Senator Preister? Senator White. []

SENATOR WHITE: Senator Preister, following up on that, given that we do have 0 percent and then we purport to allow 10 percent, do you think that would pass constitutional review by a court? []

SENATOR PREISTER: Well, as I understand... []

SENATOR WHITE: Or are we...this...as drafted is this probably unconstitutional? []

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SENATOR PREISTER: If somebody challenged it in court I think it does comport to federal requirements. But could it be challenged and could it be found unconstitutional? It could be. But you raise another issue because we then, based on the legislative standard, apply that same standard to the Board of Regents, to the Nebraska Supreme Court, to the Public Service Commission, the State Board of Education. And if you look under Public Service Commission there are only five commissioners, five commissioners in a population of 1.6 million, roughly. So we could be talking a deviation of over 30,000 people between those districts at 10 percent, 30,000 people; that could be 10,000 households. []

SENATOR WHITE: Even if it passes federal constitutional standards, it may not pass Nebraska constitutional standards. []

SENATOR PREISTER: Yeah, I...it's...point well taken. But it... []

SENATOR WHITE: I have another question, and I meant to ask it of Senator Schimek but I forgot. I note when we talk about the committees...constitutional committee, no more than five shall be from the same political party. Are independents political parties? I mean we have an increasing number of independents in the state. But we also have increasing numbers in the body as a whole, the legislative body. Would an independent qualify? Can you have...could all the nine, theoretically, be independents? []

SENATOR PREISTER: I don't think we've counted them in the party. And we traditionally have had maybe one, two, three maybe now. But it's an interesting question. []

SENATOR WHITE: I think we...I know of at least three, I think, in the body now who are independent. []

SENATOR PREISTER: Now, yeah, yeah. []

SENATOR WHITE: Thank you. []

SENATOR PREISTER: Sure. Thank you. []

SENATOR HUDKINS: Other questions? Thank you, Senator. []

SENATOR PREISTER: Thank you for listening to me on all of these. []

SENATOR HUDKINS: And the final one, number 9. []

JIM RUBY: If I could, Senator, I'd just like to take up just a couple of issues that were

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raised on this one. []

SENATOR HUDKINS: All right. []

JIM RUBY: One is in the very first paragraph of the Redistricting Committee it seems that the issue of whether or not the committee could act outside of the decennial process is taken care of when it says, "During each decennial redistricting process, the Redistricting Committee is authorized to introduce..." etcetera, etcetera. So their authorization only extends to, in the rule, only that period of time that is covered by the decennial redistricting process. And so a midterm redistricting or a five-year redistricting wouldn't fall...I don't think they would be authorized to conduct any business outside of that arena. With regards to your question with regard...Senator White, with regards to parties, I believe that the independents are not classified as a party in the state of Nebraska. And so if you could end up with... []

SENATOR WHITE: So theoretically you could have five Democrats, three Independents, and only one Republican? []

JIM RUBY: Yeah or you could...I think you could...if you could end up with that kind of population, I think you could end up with nine Independents as your Redistricting Committee... []

SENATOR WHITE: Thank you. []

JIM RUBY: ...because I don't think they fall within the definition of party as has been outlined in our statutes. The last one, senators, is Senator Schimek's bill from last year that created the State Tribal-Relations Committee and amendment to Rule 3, Section 5(b) is just to insert that...recognition of that statute into the rules so that it's there. It's just a simple housecleaning amendment to the rules, I believe. []

SENATOR HUDKINS: Senator Erdman. []

SENATOR ERDMAN: Jim, is the Midwest Rail Compact a special committee? I know Senator Engel mentioned it in his testimony earlier. And I had made a note of that. It's not in our rules. []

JIM RUBY: I don't see it in our book. So if it is, it's not... []

SENATOR ERDMAN: It is? It's in the Roster, but it's not in our rules. []

JIM RUBY: Oh, it's in the Roster, but it's not in our Rule Book. []

SENATOR ERDMAN: We may want to check, because I notice that we haven't updated

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this since January 1 of 1980. And so we may want to... []

JIM RUBY: Well, it had to have been before that...after that, Senator, because the Legislative Performance Audit was changed. []

SENATOR ERDMAN: No, what I'm saying is we may not have amended this since or not have added the compact. We just need to check because if it is we'll want to list that in our rules. []

JIM RUBY: Yes. []

SENATOR HUDKINS: Anyone want to speak on this particular one? []

PATRICK O'DONNELL: Well, I might respond to your comment. The Midwest Rail? []

SENATOR ERDMAN: Yeah, whatever Senator... []

PATRICK O'DONNELL: It's a compact. []

SENATOR ERDMAN: It's not a special committee? []

PATRICK O'DONNELL: It's not a legislative committee, per se. []

SENATOR ERDMAN: Okay. []

PATRICK O'DONNELL: I think all things we've referred to in Section 3 via the rules are legislative committees. []

SENATOR ERDMAN: Special committees? Okay. []

PATRICK O'DONNELL: Yeah, yeah. []

SENATOR HUDKINS: Is there anything else? []

SENATOR ERDMAN: Madam Chairman, did you receive the rule change I submitted to the Clerk? []

SENATOR HUDKINS: Oh, yes, I'm sorry, yes, yes, yes, yes. Would you like to introduce that? []

SENATOR ERDMAN: Do you want me to go over there? []

SENATOR HUDKINS: Wherever you would like. []

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SENATOR ERDMAN: Well, it's wherever you would like; you're the Chair. []

SENATOR HUDKINS: Stay here. []

SENATOR ERDMAN: Okay. Madam Chair, Rule 4, Section 3 deals with study resolutions, introduction, referral, standing committees, and select committee, and the results. Sub (c) of that requires, and I'll just read it in case you don't have it, "Study resolutions shall be prioritized by the Chairperson of the committee to which they are referred, and a report on those priorities shall be filed with the Clerk, on a form prescribed by the Clerk, prior to adjournment sine die. Also, the Chairperson of each committee shall file with the Clerk, on a form prescribed by the Clerk, his or her committee's study plan for the highest prioritized interim studies referenced to such committee. This study plan shall be filed no later than 30 days after adjournment sine die." It's my understanding that this specific provision about the requirement to file the study plan was included after, I think, the Public Works Committee was broken up into a couple different committees. And the idea was that this would be a requirement. I have never, nor do I know of anybody that has ever requested that. I think that the authority should be allowable and not prescribed, and so my change, and if you don't have this I'll get a copy of it made, it says...it would read: "Also, the chairperson of each committee may file with the Clerk, on a form prescribed by the Clerk, his or her committee's study plan for any study resolution referenced to such committee." And that would still allow for the opportunity. I would envision, for example, this year in the Agriculture Committee we had the State Fair study, as well as the corporate farming study. Both of those plans would have still been filed. The plan on the cash funding of the noxious weed program or other such programs, to me, is unnecessary. There doesn't appear to be a demand for it. However, the requirement that each of the resolutions still be prioritized and submitted to the Clerk would still provide notices to the intent of the committee regarding those interim studies. And the issue of requiring a full plan is, in my opinion, duplication and borders on the idea of busy work for the committee that's required 30 days after sine die. So I would submit that to the committee for your consideration. And if we don't have copies of that, I can make copies or have copies made. Okay. []

SENATOR HUDKINS: Does anyone wish to comment on this particular rule change proposal? Any questions for Senator Erdman? All right. I think then that takes care of the rule changes for today. And I would like to ask the committee to remain because we are going to debate these if any changes on Friday morning, so we have to make a decision. []

SENATOR ERDMAN: You want to go into Executive Session? []

SENATOR HUDKINS: I would like to go into Executive Session. []

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SENATOR ERDMAN: So moved. []

SENATOR DUBAS: Seconded. []

Chairperson

Committee Clerk